

Message

---

**From:** Makepeace, Caroline [Makepeace.Caroline@epa.gov]  
**Sent:** 10/27/2016 1:49:07 PM  
**To:** Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]  
**Subject:** RE: SEP question re health effects as nexus

Sorry abt the teeny tiny writing in part of the excerpt. Don't where that sprang from, and didn't seem to be able to get rid of it!

Caroline Makepeace  
Senior Counsel  
Cross-Cutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

---

**From:** Fogarty, Johnpc  
**Sent:** Thursday, October 27, 2016 9:46 AM  
**To:** Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Cavalier, Beth <Cavalier.Beth@epa.gov>  
**Subject:** RE: SEP question re health effects as nexus

Yep - thx!

---

**From:** Makepeace, Caroline  
**Sent:** Thursday, October 27, 2016 9:41 AM  
**To:** Cavalier, Beth <Cavalier.Beth@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>  
**Subject:** RE: SEP question re health effects as nexus

# Ex. 5 AC/AWP/DP

John see below in yellow, as something to consider:

## A. Third-Party Compliance Projects

Activities that are legally required of any party are generally prohibited as SEPs. Under some circumstances, however, an exception may be appropriate, but requires prior Headquarters approval from the appropriate media enforcement division director in OECA (*see* Section XII.A.5). Exceptions to this prohibition have been granted where:

1. The SEP involves a defendant's implementation of an activity that is legally required of residents of a community with environmental justice concerns (*e.g.*, maintaining or establishing connection to a sewer lateral line);
2. The residents are financially unable to comply with the legal requirement; and

3. The SEP provides significant public health and/or environmental benefits.

A specific exception has been made for chemical clean-out projects in schools. Although schools may be required to manage chemicals and hazardous wastes appropriately, many lack the skills and resources to do so. SEPs that identify, remove and properly dispose of hazardous chemicals from schools are acceptable under certain conditions, given their impact on children's health and communities with EJ concerns. Such projects may be acceptable when:

1. The recipient school is a primary or secondary public school;
2. The project provides a one-time identification, removal, and proper disposal of chemicals and/or hazardous wastes; and
3. The project includes a beyond-compliance component, such as establishing a chemical tracking system.

As with all third-party compliance projects, prior Headquarters approval from the appropriate media enforcement division director in OECA is required (*see* Section XII.A.5).

Caroline Makepeace  
Senior Counsel  
Cross-Cutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

---

**From:** Cavalier, Beth  
**Sent:** Thursday, October 27, 2016 9:37 AM  
**To:** Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>  
**Subject:** Re: SEP question re health effects as nexus

### Ex. 5 AC/AWP/DP

Beth Cavalier  
Analyst  
Special Litigation and Projects Division  
Office of Civil Enforcement  
(202) 564-3271

---

**From:** Fogarty, Johnpc  
**Sent:** Thursday, October 27, 2016 9:23 AM  
**To:** Makepeace, Caroline; Cavalier, Beth  
**Subject:** RE: SEP question re health effects as nexus

### Ex. 5 AC/AWP/DP

## Ex. 5 AC/AWP/DP

**From:** Makepeace, Caroline

**Sent:** Thursday, October 27, 2016 9:14 AM

**To:** Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Cavalier, Beth <[Cavalier.Beth@epa.gov](mailto:Cavalier.Beth@epa.gov)>

**Subject:** RE: SEP question re health effects as nexus

# Ex. 5 AC/AWP/DP

Caroline Makepeace  
Senior Counsel  
Cross-Cutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

**From:** Fogarty, Johnpc

**Sent:** Thursday, October 27, 2016 8:55 AM

**To:** Cavalier, Beth <[Cavalier.Beth@epa.gov](mailto:Cavalier.Beth@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>

**Subject:** RE: SEP question re health effects as nexus

# Ex. 5 AC/AWP/DP

**From:** Cavalier, Beth

**Sent:** Thursday, October 27, 2016 7:32 AM

**To:** Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>

**Subject:** Re: SEP question re health effects as nexus

# Ex. 5 AC/AWP/DP

# Ex. 5 AC/AWP/DP

Is there a proposal on the table from Whole Foods?

# Ex. 5 AC/AWP/DP

Beth Cavalier  
Analyst  
Special Litigation and Projects Division  
Office of Civil Enforcement  
(202) 564-3271

---

**From:** Makepeace, Caroline  
**Sent:** Wednesday, October 26, 2016 6:13 PM  
**To:** Fogarty, Johnpc; Cavalier, Beth  
**Cc:** Beth Cavalier ([Renegadway@aol.com](mailto:Renegadway@aol.com))  
**Subject:** RE: SEP question re health effects as nexus

# Ex. 5 AC/AWP/DP

Caroline Makepeace  
Senior Counsel  
Cross-Cutting Policy Staff  
Office of Civil Enforcement  
US Environmental Protection Agency  
202-564-6012

This may contain enforcement confidential or privileged material. Do not release without appropriate review. If you have received this message in error, please inform the sender, and promptly delete.

-----Original Message-----

From: Fogarty, Johnpc

Sent: Wednesday, October 26, 2016 5:46 PM

To: Cavalier, Beth <[Cavalier.Beth@epa.gov](mailto:Cavalier.Beth@epa.gov)>; Makepeace, Caroline <[Makepeace.Caroline@epa.gov](mailto:Makepeace.Caroline@epa.gov)>

Subject: SEP question re health effects as nexus

# **Ex. 5 AC/AWP/DP**